

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DERRICK BRANCH,

Petitioner,

v.

JERI BOE,

Respondent.

Case No. 2:24-cv-00517-BJR-TLF

ORDER

Petitioner Derrick Branch proceeds unrepresented by counsel and *in forma pauperis* in this 28 U.S.C. § 2254 federal habeas corpus action. Dkts. 3, 4. Respondent has filed an answer to the petition and relevant portions of the state court record. Dkt. 11. This matter is before the Court on petitioner's three motions to supplement his petition (Dkts. 14, 17, 22), petitioner's second motion to appoint counsel (Dkt. 22), petitioner's "motion to provide indigent petitioner with legal documents" (Dkt. 15) and petitioner's "motion to re-send state court record and motion to extend time for response to answer" (Dkt. 19).

Motions to Supplement the Petition

Petitioner has filed three separate motions seeking to supplement his petition to add three new claims and additional arguments (Dkts. 14, 17, 22). Respondent opposes petitioner's request to supplement his petition on the grounds that petitioner has failed to comply with Local Civil Rule 15 and Rule 2, U.S.C. foll. § 2254. Dkt. 16.

1 The rules governing relief under 28 U.S.C. § 2254 require that the petition  
2 “specify all the grounds for relief available to the petitioner” and “state the facts  
3 supporting each ground[.]” Rule 2, U.S.C. foll. § 2254.

4 Western District of Washington Local Civil Rule (LCR) 15 provides, in relevant  
5 part:

6 A party who moves for leave to amend a pleading must attach a copy of the  
7 proposed amended pleading as an exhibit to the motion. The party must indicate  
8 on the proposed amended pleading how it differs from the pleading that it  
amends by bracketing or striking through the text to be deleted and underlining or  
highlighting the text to be added. The proposed amended pleading must not  
incorporate by reference any part of the preceding pleading, including exhibits.

9 LCR 15.

10 Under Federal Rule of Civil Procedure 15(d), supplemental pleadings are  
11 permitted to the extent a party seeks to “set[ ] out any transaction, occurrence, or event  
12 that happened *after* the date of the pleading to be supplemented.” Fed. R. Civ. P 15(d)  
13 (emphasis added).

14 Here, petitioner seeks to add three additional claims and arguments in support of  
15 those new claims. Dkts. 14, 17, 22. Supplementation is not appropriate under these  
16 circumstances. *See Castillo-Chavez v. Warden, USP-Atwater*, No.  
17 124CV00037JLTSKOH, 2024 WL 308222, at \*1 (E.D. Cal. Jan. 26, 2024) (“Since [the  
18 habeas] Petitioner merely seeks to add an additional claim, supplementation will not be  
19 permitted.”).

20 Accordingly, petitioner’s motions to supplement (Dkts. 14, 17, 22) are **DENIED**  
21 without prejudice to petitioner’s filing of a proper motion to amend his petition. If  
22 petitioner moves to amend his petition, he must attach a proposed amended petition  
23  
24  
25

1 including *all* of the claims he intends to assert in this habeas action as well as any  
2 supporting arguments or documents.

3 Motions for Documents and for Extension

4 Petitioner has also filed a “motion to provide indigent petitioner with legal  
5 documents” in which he seeks a copy of his entire trial record (including all trial  
6 transcripts), a copy of his entire direct appeal record, and a copy of his entire personal  
7 restraint petition record (including all CrR 7.8 motion documents from the Washington  
8 superior court). Dkt. 15. Petitioner indicates he has been moved around to different  
9 prisons and housing units and “most of [his] legal documents have been lost.” *Id.*  
10 Respondent opposes the motion noting that the state court record, “including the briefs  
11 and opinions filed in the state court direct appeal, the briefs and opinions filed in the  
12 personal restraint petition proceeding, and the entire 26 volumes of trial transcripts”  
13 were filed with the Court and provided to petitioner on June 10, 2024. Dkt. 16.  
14 Respondent argues petitioner does not show a need for an additional copy of the record  
15 or a right to the production of any additional documents. *Id.*

16 Petitioner subsequently filed a “motion to re-send state court record and motion  
17 to extend time for response to answer.” Dkt. 19. Petitioner indicates he did not receive  
18 the copy of the state court record, indicating that he had been transferred to a new  
19 facility during the relevant period. *Id.* Petitioner also requests additional time, until July  
20 18, 2024, to file his response to the answer because he has not yet received the state  
21 court record. *Id.*

22 Respondent does not oppose petitioner’s request for the state court record and  
23 indicates that an additional copy of the record would be mailed to petitioner at his new  
24  
25

1 facility. Dkt. 20. Respondent subsequently filed a certificate of service indicating a copy  
2 of the state court record was sent to petitioner at his new facility on June 27, 2024. Dkt.  
3 21. Respondent also does not oppose petitioner's request for an extension of time to  
4 respond to the answer. Dkt. 20.

5 Petitioner's "motion to re-send state court record" (Dkt. 19) is **DENIED** without  
6 prejudice as moot.<sup>1</sup> Petitioner's motion to extend time to respond to the answer" (Dkt.  
7 19) is GRANTED. Petitioner's response to the answer is due on or before **August 12,**  
8 **2024.**<sup>2</sup> Respondent may file a reply on or before **August 19, 2024.** The Clerk is directed  
9 to re-note the answer (Dkt. 10) to **August 19, 2024.**

10 Petitioner's "motion to provide indigent petitioner with legal documents" (Dkt. 15)  
11 is **DENIED** without prejudice. Under Rule 6 of the Rules Governing Section 2254  
12 Cases, "[a] judge may, for good cause, authorize a party to conduct discovery under the  
13 Federal Rules of Civil Procedure and may limit the extent of discovery." Rule 6(a). "A  
14 party requesting discovery must provide reasons for the request. The request must also  
15 include any proposed interrogatories and requests for admission, and must specify any  
16 requested documents." Rule 6(b).

17 Here, respondent has provided petitioner a copy of the state court record which  
18 appears to contain most, if not all, of the documents petitioner requests. Petitioner fails  
19 to show at this point that he requires, or that there is good cause for, the Court to direct  
20

21  
22 <sup>1</sup> In the event petitioner does not receive the new copy of the state court record, he should notify the  
Court as soon as possible.

23 <sup>2</sup> The Court notes it is providing petitioner some additional time to file a response to ensure he has  
24 sufficient time to consider this current order and whether he intends to file a motion to amend his petition  
to include additional claims.

1 the production of any additional documents. Accordingly, petitioner's "motion to provide  
2 indigent petitioner with legal documents" (Dkt. 15) is **DENIED** without prejudice.

3 Second Motion to Appoint Counsel

4 Petitioner also seeks appointment of counsel for a second time (Dkt. 22). The  
5 Court previously denied petitioner's first motion to appoint counsel. Dkts. 5, 9.

6 Petitioner requests the appointment of counsel to ensure that his grounds for  
7 relief are adequately raised. Dkt. 22. He indicates he believes he has "non-frivolous"  
8 issues and that his trial was fundamentally unfair. *Id.* He indicates he has read that "if  
9 someone raises an issue of ineffective assistance of appellate counsel that they are  
10 generally appointed federal counsel." *Id.*

11 As indicated in the order addressing petitioner's first motion for counsel, there is  
12 no right to appointed counsel in cases brought under 28 U.S.C. § 2254 unless an  
13 evidentiary hearing is required or such appointment is necessary for the effective  
14 utilization of discovery procedures. *See McCleskey v. Zant*, 499 U.S. 467, 495 (1991);  
15 *United States v. Duarte-Higareda*, 68 F.3d 369, 370 (9th Cir. 1995); *United States v.*  
16 *Angelone*, 894 F.2d 1129, 1130 (9th Cir. 1990); *Weygandt v. Look*, 718 F.2d 952, 954  
17 (9th Cir. 1983); Rules Governing Section 2254 Cases in the United States District  
18 Courts 6(a) and 8(c). The Court may appoint counsel "at any stage of the case if the  
19 interest of justice so require." *Weygandt*, 718 F.2d at 954. In deciding whether to  
20 appoint counsel, the Court "must evaluate the likelihood of success on the merits as  
21 well as the ability of the petitioner to articulate his claims pro se in light of the complexity  
22 of the legal issues involved." *Id.*

1 Here, the Court still does not find good cause at this point for granting leave to  
2 conduct discovery; thus, counsel is not necessary to effectively utilize discovery.  
3 Further, the Court has not determined an evidentiary hearing is required. See Rules  
4 Governing Section 2254 Cases in the United States District Courts 6(a) and 8(c).  
5 Moreover, petitioner has effectively articulated his grounds for relief raised in the  
6 petition, the grounds do not, at this point, appear to be factually or legally complex, and  
7 petitioner has not shown at this stage that he is likely to succeed on the merits of this  
8 case. See Dkt. 4. Accordingly, petitioner's second motion to appoint counsel (Dkt. 22) is  
9 **DENIED** without prejudice.

10 The Clerk is directed to provide petitioner with the Court's form for filing an  
11 amended 28 U.S.C. § 2254 habeas petition. The Clerk is directed to provide a copy of  
12 this order to petitioner and counsel for respondent.

13 Dated this 9th day of July, 2024.

14  
15 

16 

---

Theresa L. Fricke  
17 United States Magistrate Judge  
18  
19  
20  
21  
22  
23  
24  
25